

IN THE MATTER OF

JOHN M. KURTZ

Petitioner

: BEFORE THE
:
: HOWARD COUNTY
:
: BOARD OF APPEALS
:
: HEARING EXAMINER
:
: BA Case No. 08-037V
:

DECISION AND ORDER

On September 2, 2008, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of John M. Kurtz for a variance to reduce the 25-foot rear setback to 12 feet for a proposed deck to be attached to the rear of a single-family detached dwelling in an R-ED (Residential: Environmental Development) Zoning District, filed pursuant to Section 130.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioners provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

John Kurtz, Gregory Benson, and Philip Ernst testified in favor of the petition. No one testified in opposition to the petition.

FINDINGS OF FACT

Based upon the evidence presented at the hearing, I find as follows:

1. The 9,008 square foot, triangular shaped property is located on the north side of Pleasant Path about 175 feet southeast of Winding Ross Way and is also known as 4309 Pleasant Path (the "Property"). The Property lies in the 2nd Election District and is identified on Tax Map 25, Block 21 as Parcel 75, Lot 557. It is part of the Autumn View Section 5 Area 2 subdivision.

2. The front lot line appears to be about 58± feet wide, the rear, about 97± feet wide, and the side lot lines, about 126± feet deep. The Property is improved by a two-story single-family detached dwelling situated deep into the lot. Access is provided via a driveway lying near the west lot line and ending at a two-car attached garage.

3. Vicinal Properties. Adjacent properties are also zoned R-ED. To the north, behind the dwelling, is Open Space Lot 300. A public utility easement runs through the Property's west lot line and it provides access to the open space lot. The lots on the north side of Pleasant Path are improved with single-family detached dwellings. These dwellings are situated much closer to Pleasant Path than the subject Property. Several neighboring properties have rear decks.

4. The Petitioner is requesting a variance from Sections 107.D.d(1)(c) and 128.1.d to construct a 30-foot wide rear deck with a 15± foot section having a maximum depth of 16 feet. Because decks may encroach 10 feet into the 25-foot rear setback, the proposed deck would encroach an additional 3 feet into this setback.¹ The property owners are also proposing to construct an access stairway, which the petition plan indicates will be constructed within the permissible 10-foot deck encroachment area.

5. John Kurtz, father-in-law to one of the property owners, testified the Property differed from neighboring properties owing to its shape and includes an easement along one side

6. Gregory Benson, one of the property owners, testified the rear section of the Property slopes moderately in two directions, which limits the use of the rear yard and the location of a deck.

¹ A 3 foot section lies outside the setback.

7. Philip Ernst, a neighbor, testified in favor of the petition, stating several decks have been constructed on area dwellings.

CONCLUSIONS OF LAW

The standards for variances are contained in Section 130.B.2.a of the Regulations. That section provides a variance may be granted only if all of the following determinations are made:

(1) That there are unique physical conditions, including irregularity, narrowness or shallowness of the lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique physical condition, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.

(2) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

(3) That such practical difficulties or hardships have not been created by the owner provided, however, that where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

(4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief.

Based upon the foregoing Findings of Fact, and for the reasons stated below, I find the requested variance complies with Section 130.B.2.a(1) through (4), and therefore may be granted.

1. The first criterion for a variance is that there must be some unique physical condition of the property, e.g., irregularity of shape, narrowness, shallowness, or peculiar topography that results in a practical difficulty in complying with the particular bulk zoning regulation. Section 130.B.2(a)(1). This test involves a two-step process. First, there must be a finding that the

property is unusual or different from the nature of the surrounding properties. Secondly, this unique condition must disproportionately impact the property such that a practical difficulty arises in complying with the bulk regulations. See *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995). A "practical difficulty" is shown when the strict letter of the zoning regulation would "unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome," *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28, 322 A.2d 220 (1974).

In this case, there is no dispute that the lot is irregularly shaped and has a moderate double slope in the rear. Consequently, I conclude the narrowness of the Property's front section and its overall shape is a unique physical condition causing the Petitioner practical difficulty in complying with the setback requirement, in accordance with Section 130.B.2.a(1).

2. The proposed deck will be used for a permitted purpose. As the evidence shows, and as I observed, many neighboring dwellings have rear decks of similar size. The variance, if granted, will therefore not alter the essential character of the neighborhood in which the Property is located nor substantially impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare, in accordance with Section 130.B.2.a(2).

3. The practical difficulties in complying strictly with the setback regulation arise from the Property's shape and topography and were not created by the Petitioners, in accordance with Section 130.B.2.a(3).

4. The proposed deck is a reasonable size. Within the intent and purpose of the regulations, then, the variance is the minimum necessary to afford relief, in accordance with Section 130.B.2.a(4).

ORDER

Based upon the foregoing, it is this 8th Day of September 2008, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of John M. Kurtz for a variance to reduce the 25-foot rear setback to 12 feet, thereby increasing the 10-foot maximum deck encroachment into that setback to 13 feet, for a proposed rear deck on a single-family detached dwelling in an R-ED (Residential: Environmental Development) Zoning District is **GRANTED**.

Provided, however, that:

1. The variance shall apply only to the use and structure as described in the petition submitted and not to any other activities, uses, structures, or additions on the Property.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**

Michelle L. LeFaivre
Michelle L. LeFaivre

Date Mailed: 9/9/08

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.